of M.R.M.A. showed that T.M.R.M. (not "the deceased" as mistakenly stated in the affidavit) owned a half share in that business.

The appellant says that the evidence adduced by the petitioner was insufficient to discharge the onus imposed upon him of proving that the asset in question was an asset of a joint Hindu family and was not the testator's of which he had power to dispose by will.

Admittedly, an adopted son, according to Hindu law, is in precisely the same position in the family as a natural and lawful son, and if the testator did inherit the interest of his father (by adoption) in the firm M.R.M.A., it would seem the Hindu law is, that such interest becomes joint family property and, on the testator having sons, they each acquired a joint interest equal to the testator's. There is no proof apart from the general statements in the two affidavits as to how the testator acquired the half share interest in the business of M.R.M.A. The learned judge of first instance found that this one half share "somehow or other passed to the testator", and it was partly on this finding of fact he based his decision.

The question is, is such finding sufficient, when, according to the same learned judge's statement of the Hindu Law, there are ways of acquiring property under Hindu Law whereby the quality of being family property does not attach so as to preclude the party acquiring it from disposing of it? Unless the half share in the business of M.R.M.A. was ancestral property, as to which there is no evidence, one way or the other, there was no reason why its owner T.M.R.M. Ramanathan Chettiar should not dispose of it. He may have sold it to the testator, as the testator's will suggests. If the testator inherited the half share from his adoptive father, there is no more to be said about the matter, but the learned judge merely found that it "passed somehow or other" to the testator and he did not find that in the hands of Ramanathan Chettiar it was ancestral property or joint family property. For this reason I think the appeal should be allowed with costs.

Appeal allowed.

Solicitors for appellants—*Presgrave and Matthews.*

Solicitors for respondents—*Hogan, Adams and Allan.*

[APPELLATE CIVIL JURISDICTION]

McELWAINE, C.J.

May 3, 1941.

A.L.M.M. MUTHUKARUPPAN CHETTIAR

v.

HAJI IBRAHIM.

[SINGAPORE DISTRICT COURT APPEAL No. 5 of 1940]

The Increase of Rent (Restriction) (Amendment) Ordinance 1940,—Summons claiming possession of land —Definition of the word "land"—Length of notice to quit.

An attap house built by a ground tenant is usually not a fixture; it is the property of the tenant who is entitled to remove it. A month's notice to quit is usually sufficient to terminate a monthly tenancy of a dwelling or of an ordinary shop.

Prior to the coming into force of Ordinance 40 of 1940 (The Increase of Rent (Restriction) (Amendment) Ordinance 1940) no permission of the Rent Assessment Board under S. 8 of the Increase of Rent (Restriction) Ordinance 1939 was necessary before a landlord could eject or apply to any Court to eject a tenant of land only, even though the tenant had built an attap house upon such land. So far as concerns such a case, "land" is not "premises" as defined by the Ordinance as unamended. (This definition was altered by Ordinance No. 40 of 1940).

Cases referred to:—

(1) *Parry v. Hazell* 1 Esp. 93.
(2) *Lee Ah Toke v. Chan Ah Fat* 2 S.S.L.R. 20.
(3) *Tay Boon Huat v. Kulsam Bee* 13 S.S.L.R. 51.
(4) *Martin v. Watts* 7 T.L.R. 83.
(5) *R. v. Swaine* 4 M.L.J. 276; (1935) S.S.L.R. 228.
(6) *Colonial Sugar Refining Company v. Irving* (1905) A.C. 369.
(7) *Hitchcock v. Way* 2 Ad. & E. 943.
(8) *In re Joseph Suche & Co., Ltd.* 1 Ch. D. 48.
(9) *Quilter v. Mapleson* 9 Q.B.D. 672.

MAGISTRATE'S APPEAL.

Cobbett for appellant.

Demuth for respondent.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

McElwaine, C.J.—This is an appeal from the decision of the District Judge (Civil) dismissing the appellant's summons in which he asked for possession

of a piece of land let by the plaintiff to the defendant on a monthly tenancy at the monthly ground rent of $1.50.

The salient facts are not in dispute. The plaintiff let a piece of land to the defendant on a monthly tenancy. The defendant built on the land an attap house or hut in which the defendant dwells. This house or hut is not a fixture; it is the property of the defendant who is entitled to remove it.

On 13th March 1940 notice was given on behalf of the plaintiff to the defendant requiring him to quit and deliver up possession of the land on 30th April 1940. The defendant did not give up possession and on 20th May 1940 the summons was issued. The case came before the Court on 10th June 1940, and after various adjournments arguments were heard, the District Judge inspected the house or hut and on 17th September delivered judgment in favour of the defendant with costs.

The learned District Judge held that while mere land is not "premises" within the definition in the Increase of Rent (Restriction) Ordinance, 1939, yet if the landlord seeks to eject a tenant from land on which he is living in a dwelling house which comes within the definition of premises, it will be a necessary consequence of the ejectment from the land that the tenant will be ejected from his house, and that s. 8 applies.

The District Judge inspected the house and formed the opinion that the house could certainly be removed but only by pulling it to pieces, and that it was so old that although it would probably stand where it was for a number of years more, it could never be re-erected on a new site as probably very few of its timbers could be utilised in rebuilding.

Further, the District Judge considered that one month's notice to quit was not sufficient because the house must have taken about a month to build and it was unreasonable to expect the defendant to find a new site, clear and prepare the same and re-erect the house within the space of one month. So far as the record shows the argument before the Court below was whether the defendant's dwelling was a hut or a house or "premises."

I see nothing to indicate that the sufficiency of the notice to quit was even questioned by counsel.

It was said on the appeal that the District Judge should have required evidence that the house could not be removed without its total destruction and that such evidence should have been given by experts. I do not agree. The District Court is intended to provide a speedy inexpensive procedure, and I have little doubt that this experienced District Judge was quite competent to inspect the house in this case and to form an opinion whether it could be pulled down, removed and re-erected out of its old materials, without the assistance of expert witnesses.

But this conclusion of the District Judge was only used by him in connection with the sufficiency of the notice which did not affect the main issue which was, as Mr. Demuth pointed out, could the defendant be turned out without permission of the Rent Assessment Board, which permission had not been obtained?

Sec. 8 of the Increase of Rent (Restriction) Ordinance 1939 enacts:—

> "From and after the first day of August, 1939, no landlord or sublandlord shall without the permission of the Board in writing eject or apply to any Court for an order for the ejectment of or take any step towards ejecting his tenant or subtenant from any premises to which this Ordinance applies: provided that this section shall not apply to ejectment for non-payment of rent where rent has been in arrear for fourteen days after it has become due."

This section alters common law rights and it must be construed strictly.

The landlord took no steps to eject the tenant from the "premises", that is, the house. He took steps to eject him from the land, and I do not consider it legitimate to say that because the consequences of ejecting him from the land may be that he cannot remain in the house because he cannot find another site for the house or because he cannot rebuild it, therefore the landlord has ejected the tenant from the house.

Reading this Ordinance as a whole it appears to me to relate to a landlord of premises. So far as this case is concerned "land" is not "premises" and the plaintiff did not own the "premises".

Has the plaintiff applied to the Court for an order for the ejectment of his tenant from any premises? He has not. The prayer in the summons is for possession of the said piece or part of land now in the occupation of the defendant. He does not ask for possession of the premises. The relation of landlord and tenant did not exist between the plaintiff and the defendant in respect of the house or "premises".

I think the connection between taking action to recover the land and the unhousing of the defendant is too remote. If instead of a dilapidated house it was a building not much larger than a tent or caravan

which could easily be moved from the land, could it be said that the defendant was being ejected from his house? I think not, and the application of the section is not altered by such fortuitous facts as that the house will fall to pieces, or cannot be rebuilt, or that a new site cannot be rented at as low a rent.

This view is strengthened by the fact that the legislature has, since this litigation commenced, provided special protection for tenants who occupy movable buildings falling within the definition of premises, Ordinance No. 40 of 1940.

The learned District Judge was of opinion that a month's notice to quit was insufficient.

The tenancy is a monthly one. In England, "where the tenancy is otherwise than yearly, and there is no local custom or special stipulation as to notice, a notice corresponding with the period of tenancy is clearly sufficient", Woodfall, 24th edn. 958. In *Parry v. Hazell*[1] it was held that a month's notice was sufficient to terminate a monthly tenancy of a house.

Sect. 5, sub-s. 2 of the Civil Law Ordinance enacts that nothing therein shall be deemed to introduce into the Colony any part of the law of England relating to tenure or conveyance of immovable property, but I am aware of nothing in the Colony law on this point which is inconsistent with the English law, and in *Lee Ah Toke v. Chan Ah Fat*[2] Gatty, J. held that a month's notice was sufficient to terminate a monthly tenancy of a house. On the other hand, in *Tay Boon Huat v. Kulsam Bee*[3] it was held that four months' notice was necessary to terminate a monthly tenancy of a market garden. It is clear from that case that Earnshaw, J. applied the principle of the Agricultural Holdings Acts and the decision was based on the length of time necessary for crops to mature. The Judge held that there must be a reasonable notice, and he quoted from *Martin v. Watts*[4] "it would be extremely unjust that a tenant who occupies the land, should, after he has sown it, be turned out of possession by an ejectment without any notice." Before deciding the case the learned Judge inspected the land and as a result of his inspection considered that four months' notice should be given. I think from this that he must have taken into consideration the kind of vegetables planted and their degree of growth and, in my opinion, this is a fair and reasonable test. I do not consider that the case lays down any hard and fast rule. If a market garden on a monthly tenancy is not planted at all there is no reason why a month's notice should not suffice. If it has just been planted it is conceivable that four months' notice might be insufficient.

In *R. v. Swaine*,[5] a case of criminal mischief—it was held that a tenant at will of land was entitled to a reasonable time to demolish his moveable house.

The principle of the English law in such cases as monthly tenancies is that apart from agreement as to notice, the notice must be reasonable in all the circumstances and the same principle should be applied here. I think that a month's notice is quite sufficient to terminate a monthly tenancy of a dwelling or of an ordinary shop. If one could imagine a large factory with heavy machinery being held on a monthly tenancy and the tenant entitled to remove the machinery, a month's notice might be insufficient.

The Court cannot take into consideration the length of time it may take to get a lease of or licence to occupy other land, or the time necessary to re-erect or to build elsewhere. In the case before me I think a month's notice reasonable and that the plaintiff should have succeeded.

In my opinion the alteration of the law by the amending Ordinance of 1940 makes no difference to the present plaintiff's rights. His right to sue for ejectment accrued, and his suit was commenced before the 1st July, 1940, on which date the defendant's house became "premises". To this extent the retrospective effect of Ordinance No. 40 of 1940 is effective. The defendant's house was not "premises" when the action was commenced.

It is stated in *Maxwell* on the Interpretation of Statutes, 8th edn., at p. 195, "In general, when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.

In *Colonial Sugar Refining Company v. Irving*[6] Lord Macnaghten said: "As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was

considered that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed."

Mr. Cobbett referred me to *Hitchcock v. Way*[7] and *In re Joseph Suche & Co., Ltd.*[8] as showing that "it is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them."

The same principle is enunciated in *Quilter v. Mapleson*[9] where Bowen, L.J. said, "No doubt, as a general rule, a statute does not affect pending proceedings, but that rule is only a guide where the intention of the legislature is obscure, it does not modify the clear words of a statute." There the Court considered that the statute under consideration was retrospective to a time anterior to the proceedings. In the present case the statute is clearly not so retrospective.

I am, therefore, of opinion that the learned District Judge ought to have given judgment for the plaintiff and that the plaintiff can be given the relief to which he was entitled when he issued his summons on 20th May, 1940.

The appeal is allowed.

Appeal allowed.

Solicitors for the appellants:—*Rodyk and Davidson.*

Solicitors for the respondents:—*Shelley, Thompson and Demuth.*

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.